

# **JOINT COMMITTEE ON ADMINISTRATIVE RULES**

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:  
SEN. DON HARMON

CO-CHAIR:  
REP. RON SANDACK

EXECUTIVE DIRECTOR:  
VICKI THOMAS



700 STRATTON BUILDING  
SPRINGFIELD, ILLINOIS 62706  
217/785-2254

SEN. PAMELA ALTHOFF  
SEN. BILL BRADY  
SEN. KAREN McCONAUGHAY  
SEN. TONY MUÑOZ  
SEN. IRA SILVERSTEIN  
REP. GREG HARRIS  
REP. LOU LANG  
REP. DAVID R. LEITCH  
REP. ANDRÉ THAPEDI  
REP. MIKE TRYON

## **MINUTES**

**March 17, 2015**

### **MEETING CALLED TO ORDER**

The Joint Committee on Administrative Rules met on March 17, 2015 at 10:30 a.m. in Room C-1 of the Stratton Office Building, Springfield, Illinois. Co-Chair Sandack called the meeting to order and announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee hearings. Other persons are encouraged to submit their comments to the JCAR office in writing.

### **ATTENDANCE ROLL CALL**

X Senator Pamela Althoff	X Representative Greg Harris
X Senator Bill Brady	X Representative Lou Lang
X Senator Don Harmon	X Representative David Leitch
X Senator Karen McConnaughay	X Representative Ron Sandack
X Senator Tony Muñoz	X Representative André Thapedi
X Senator Ira Silverstein	X Representative Mike Tryon

### **APPROVAL OF THE MINUTES OF THE FEBRUARY 18, 2015 MEETING**

Representative Lang moved, seconded by Representative Tryon, that the minutes of the February 18, 2015 meeting be approved. The motion passed unanimously (12-0-0).

### **REVIEW OF AGENCY RULEMAKINGS**

***Department of Insurance – Confidential Supervisory Information (50 Ill. Adm. Code 870; 38 Ill. Reg. 16523)***

Jim Rundblom, DOI Deputy General Counsel, confirmed that DOI would withdraw the rulemaking in response to a JCAR Objection. Senator Althoff moved, seconded by Representative Tryon, that JCAR object to this rulemaking because the Agency has been unable to demonstrate that the confidentiality of supervisory information will be sufficiently preserved. The motion passed unanimously (12-0-0).

***State Employees' Retirement System – The Administration and Operation of the State Employees' Retirement System of Illinois (Emergency) (80 Ill. Adm. Code 1540; 39 Ill. Reg. 2792)***

Representative Leitch moved, seconded by Senator McConnaughay, that JCAR object to Section 1540.380(c) of this emergency rule because that subsection is subjecting other State agencies to SERS rules, without any statutory authority to do so.

Timothy Blair, SERS Executive Secretary, stated that SERS agrees that SERS lacks the statutory authority to set policy for other State retirement systems. SERS was attempting to specify what would constitute a payment or calculation error and inadvertently applied the rule to the Judges and General Assembly Retirement Systems as well as to SERS. SERS would like to fix this problem, as it was not the rule's intent. He confirmed that the emergency rule would be modified to address this problem.

Representative Lang asked why this issue qualified for use of emergency rulemaking. Mr. Blair said that a court ruled that SERS did not have the statutory authority to correct errors in calculations, which SERS had been doing since its creation in 1944. At SERS' request, a statutory change was enacted specifically giving SERS this authority, but thereafter a federal lawsuit was filed claiming that there were no rules adopted to implement this statutory fix. Mr. Blair argued that the statute is clear on its face and no additional rules are necessary, but, given the federal lawsuit, SERS thought it prudent to propose this rule and adopt it immediately as an emergency rule.

Representative Lang asked whether the proposed permanent rule is identical to the emergency rule. Mr. Blair confirmed that this was the case, that it had the same problem of setting other agencies' policies, and that it also would be modified to correct this problem.

Representative Thapedi asked about the nature of the Sangamon County circuit court case that SERS lost (*Sharp v. SERS* (2014 IL App (4<sup>th</sup>) 130125)). Mr. Blair explained that both the appellate and circuit courts decided that, since SERS did not have a specific provision in its statute allowing it to correct calculation errors, the General Assembly's omission of this authority must be taken at face value. After passage of the statute authorizing SERS to correct miscalculations, another case was filed in federal court (*Sharp, Bonczyk, and Hart v. Board of Trustees of the State Employee's Retirement System*, US Dist. Ct. for Central Dist. of IL, No. 15-3022). Representative Thapedi asked whether the intent of the rule was to circumvent or comply with the court's decision. Mr. Blair said that it was not to circumvent, but to comply. The court said that the General Assembly could give SERS the authority to correct miscalculations, so SERS asked the General Assembly to do so (which it did unanimously). The emergency rule reflects the statutory language (with the exception of the objectionable language in subsection (c)).

Hearing no further discussion, Co-Chair Sandack called for a vote. The motion passed unanimously (12-0-0).

**AGENCY RESPONSE**

***Pollution Control Board – Organization, Public Information and Types of Proceedings (2 Ill. Adm. Code 2175; 38 Ill. Reg. 22834)***

No further action was taken.

**CERTIFICATION OF NO OBJECTION**

Senator Brady moved, seconded by Representative Tryon, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection or an Extension, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based upon the Agreements for modification of the rulemakings made by the agencies, no Objections will be issued. The motion passed unanimously (12-0-0).

**APRIL MEETING DATE**

Co-Chair Sandack announced that the next monthly meeting of JCAR is scheduled for 10:30 a.m. on Tuesday, April 14, 2015, in Room C-1 of the Stratton Office Building, Springfield IL.

**ADJOURNMENT**

Senator Silverstein moved, seconded by Representative Harris, that the meeting stand adjourned. The motion passed unanimously (12-0-0).

*Min:0315Mar*